

INTEROFFICE CORRESPONDENCE

DATE: January 11, 1994

TO: Distribution

FROM: P. W. Swenson, Program Integration, T130D, X7211

SUBJECT: INTERAGENCY AGREEMENT REEVALUATION - PWS-004-94

An Interagency Agreement (IAG) between the Department of Energy (DOE), Environmental Protection Agency (EPA), and the Colorado Department of Health (CDH) governs the scope and schedule for environmental restoration activities on the sixteen current Operable Units at the Rocky Flats Plant. The current IAG does not recognize the change in mission of the plant from defense production to waste management and environmental restoration. In addition, the IAG was developed using best estimates of resource and schedule requirements for accomplishing the known body of restoration work. Since its signing in 1991, there has been an expansion of work scope and documentation requirements. The environmental restoration program has fallen behind the rigid schedules set by the IAG. In order to achieve more flexibility in the application of resources and technology, as well as providing the opportunity to speed up cleanup efforts, it has been proposed that the IAG be reevaluated.

Each of the IAG parties has developed a list of principles that will govern the reevaluation. As would be expected, these principles differ for the three parties. EG&G Rocky Flats has commented on the principles developed by DOE, Rocky Flats Office (RFO), and a preliminary meeting with the parties was held on January 6, 1994. On January 7, 1994, the DOE, RFO and EG&G Rocky Flats reevaluation team met to begin the development of the strategy that will be used in the reevaluation.

I have been appointed by EG&G Rocky Flats as the team leader for the IAG Reevaluation Team. For the present time, our role will be to support DOE, RFO since we are not a signatory to the original IAG. However, it is the contention of the EPA that EG&G Rocky Flats should be a signatory. I am sending this information to you in your capacity as the Assistant General Manager (AGM) point of contact for strategic planning. A new IAG could significantly affect our long range plans. In view of this, I will be sending you, periodically, information on the course of the reevaluation. I will rely upon you as the AGM contact for your organization's assistance in planning the reevaluation strategy. This may include participation in strategy planning meetings.

As a first task in planning our strategy, I would like you to review the consolidated list of IAG principles that is attached. This list was compiled by RFO from the separate lists of principles submitted by each of the three IAG parties. DOE has accepted 18 of the principles and has not accepted others. You will find the commonly accepted principles on the attached list of "Consolidated IAG Principles". Those still in contention are listed as "Issues".

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The underlying objective for the reevaluation from EG&G Rocky Flats perspective is to achieve flexibility in implementing the IAG. This would be exhibited by having a process by which it would be easier for EG&G Rocky Flats to change the agreed upon milestones. On the other hand, it would be expected that there would be many more milestones and that many more plant activities might be covered. For example, the removal of excess chemicals from a building is an activity that could lead to a release. This possibility could subject this activity to CERCLA requirements. This might mean the activity is impacted by the IAG.

As a first task in supporting the reevaluation, I request that you arrange for appropriate personnel in your organization to review these principles and provide to me an assessment of the impact of these principles on your organization. Specifically, we need to address the following questions with regard to these principles:

- Will any of these principles create an unacceptable impact on your organization;
- Are any of these principles "must haves" to ensure that your organization can execute the IAG; and
- If there are "must haves" principles, are there areas in which we can give ground during the negotiations in order to win on the "must haves"?

I would appreciate your response by January 14, 1994. If you have questions on this matter, please contact me at extension 7211, fax 6375 or Eric Johnson at extension 6378, fax 6375.

ahb

Attachment:
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KEY TO UNDERSTANDING MODIFICATIONS TO CONSOLIDATED IAG PRINCIPLES

1. Principles were divided into two categories: those that were agreed to by all agencies and those that present an issue for at least one agency.
 - Those principles that have been agreed to maintained the numeric designation from the 12/22 version of the consolidated principles.
 - Those principles that are still at issue have been given an alpha designation. If the principle was originally in the "Issues" category from the 12/22 consolidated principles, it maintained that designation. If the principle was moved to the "Issues" category (as a result of the 1/6 meeting), it was given an alpha designation with the original number (from the 12/22 consolidated principles) indicated in parentheses.
2. For each principle included under the "Issues" heading, there is an indication of which parties agree and which parties have an issue with the principle. In addition, a short summary of the issues, as discussed in the 1/6 meeting, are presented.
3. **Bold** indicates changes/proposed changes to the principles as discussed in the 1/6 meeting.

DRAFT**CONSOLIDATED IAG PRINCIPLES****AGREED TO BY ALL PARTIES**

1. Negotiations will work toward an IAG that considers the current mission of Rocky Flats, which is "Manage Waste and Materials, clean up and convert the Rocky Flats site to beneficial use in a manner that is safe environmentally and socially responsible, physically secure, and cost-effective."
2. Within the scope of the agreement, control of higher risks will be given priority, emphasizing and ensuring public and worker health and safety, and environmental protection.
5. The three principals (EPA Regional Administrator, Director for the Office of Environment at Colorado Department of Health and RF Manager) enter IAG negotiations with the same level of authority that binds their respective agencies.
6. The public will be involved in identifying areas within the present agreement in need of improvement and goals to be set for a revised cleanup approach at Rocky Flats. Increased stakeholder involvement in the work scope development, prioritization, schedule and budget process is required to develop an understanding of the public's desires. The Citizens Advisory Board should be utilized to coordinate stakeholder involvement.
7. Planning assumptions must be agreed upon by all parties. Comprehensive work scope, schedule, and cost estimates will be the basis for schedule discussions and milestone establishment in the IAG. Regulators will be meaningfully involved in the development of the scope, schedules, and costs associated with IAG implementation.
9. The issues identified by the Quality Action Team (QAT) must have action plans and schedules for resolution prior to negotiations. All parties recognize that early efforts on these issues will facilitate effective and efficient negotiations.
10. The agreement should allow the opportunity for involvement in formal controls including formal baseline change control processes.
12. A revised agreement should define an improved and accelerated cleanup program at Rocky Flats. New streamlined processes should be used wherever possible.
16. The goal for the IAG negotiations is not to exceed 4 months.

ISSUES

- a. EG&G must be held more accountable to all parties for implementing the revised agreement.
- b. Existing IAG will remain in effect, including all procedural and penalty components, until specifically superseded by a revised and executed final IAG. During the negotiation period, EPA/CDE may continue to assess stipulated penalties within terms of the present agreement, and DOE may dispute such assessment, pursuant to the IAG.

- c. DOE must pay significant penalty for violations of existing IAG.
- d. Prior to signing a new agreement, DOE will pay a significant monetary penalty for current violations and unavoidable future violations of the existing agreement.
- e. Interim relief for DOE on milestone schedules and other compliance issues related to the IAG must be accompanied by DOE schedule commitments on short and long-term issues such as: full compliance with RCRA/CHWA, cleanup, removal of stored waste from RFP, decommissioning completion, etc. DOE must affirm the Administration's commitment to requesting full funding for the IAG requirements after the interim relief period (2-3 years).
- f. It is essential for the State of Colorado to maintain its oversight capacity at the Rocky Flats Plant. To do this, the Agreement in Principle (AIP) must be extended for at least five years at current levels of funding (\$3,700,000) plus inflation.
- g. DOE must continue to conduct necessary inspections of all radioactive, hazardous, and mixed wastes stored at Rocky Flats Plant to assure safety and proper management. Any issues regarding the proper management of mixed residues will be addressed in accordance with the appropriate provisions of the Residue Agreements. (DOE modification to 12/22 version)
- h. DOE must develop definitions, policies, and/or plans for D&D, transition, economic development, and waste management. All of these potentially impact successful implementation of the IAG, and a common understanding within and between parties is essential prior to negotiations. (Added by CDH to the 12/22 version)
- i. (3) The IAG will remain essentially a remediation document. Additions to the IAG shall be limited to certain D&D and ER waste management activities, the scope of which shall be subject to negotiations.
 - DOE Agreed
 - CDH Agreed
 - EPA Issue - does not incorporate all issues points in original EPA principle 1b.
- j. (4) DOE must demonstrate a firm commitment to accomplish the effort agreed upon within the agreement. This commitment must result in specific management improvements, firm financial commitments for IAG implementation in future years, and penalties for non-compliance.
 - DOE Agreed
 - CDH Agreed
 - EPA Issue - does not incorporate all issues points in original EPA principle 1b.
- k. (8) The agreement should allow flexibility to accomplish efficient cleanup at Rocky Flats. It must also remain effective enforcement vehicle. Negotiations should pursue some type of milestone schedule that allows for periodic review of the milestones while retaining some milestone schedule framework. The agreement also needs to include a mechanism to account for changing circumstances.
 - DOE Agreed
 - CDH Agreed
 - EPA Issue - EPA believes IAG already has mechanism for allowing flexibility, wants definition of DOE commitment to achieving milestones, and wants definition of milestone flexibility.

- l. (11) Future site use and cleanup are closely intertwined. Cleanup must be consistent with the projected future use of the site and vice versa. A future site use determination process that avoids the implementation of unsubstantiated or conservative risk criteria, and unrealistic cleanup goals, should be included in the amended agreement.
 - DOE Issue
 - CDH recognizes issue but would like to delete
 - EPA Issue
- m. (13) Recognition that the Rocky Flats Plant is an NPL site and the degree and extent of application of the CERCLA process to specific buildings, structures and equipment will be subject to negotiations.
 - DOE Issue - (minor wording change from "Superfund" to "NPL") agree with CDH
 - CDH Issue - captured in principle #3 and does not include RCRA, should be deleted.
 - EPA Issue - disagrees with CDH comment to delete from principles
- n. (14) Any issues that have the potential to impede the cleanup of the plant will be subject to negotiations.
 - DOE Agreed
 - CDH Issue - needs clarification of the principle
 - EPA Issue - agrees with CDH that the principle needs further clarification
- o. (15) The agencies agree that prior to negotiation of revised schedules and milestones, procedures and regulations applicable to the activities covered by the agreement will be reviewed by DOE with the ultimate goal of achieving consensus among the parties regarding the elimination of those that add no value or delay the clean-up process. This review process will be conducted with participation of regulatory agencies and stakeholders.
 - DOE Issue - needs further internal clarification of status of review process
 - CDH Issue - wants deadline of Sept. 1, 1994 added, agree with EPA
 - EPA Issue - scope/schedule discussions cannot proceed until review completed
- p. (17) During negotiations, milestones will be established committing DOE to significantly expanding permitted interim waste storage. This would include storage for existing wastes and for new wastes, particularly environmental restoration (ER) and decontamination and decommissioning (D&D) wastes. The regulators will assist DOE by facilitating and expediting the permitting process.
 - DOE Agreed if directed towards ER waste
 - CDH Issue - wants first sentence changed to include a deadline
 - EPA Agreed with concept
- q. (18) Long-term storage of off-site wastes from other DOE facilities is not planned at the Rocky Flats Plant, except as specifically provided by orders or agreements pursuant to FFC Act requirements. The use of limited quantities of wastes from other sites for technology development will be subject to regulatory approval.
 - DOE Issue
 - CDH Issue
 - EPA Issue